

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

10  
11 MARIA GURROLA; JOSÉ )  
12 GURROLA, )  
13 Plaintiffs, )  
14 v. )  
15 ALLSTATE INSURANCE )  
16 COMPANY, a California )  
corporation; and DOES 1 )  
through 20, inclusive, )  
17 Defendants. )

)  
Case No. EDCV 08-535-VAP  
(JCRx)  
[Motion filed on September  
12, 2008]  
**ORDER GRANTING SUMMARY  
JUDGMENT IN FAVOR OF  
DEFENDANT ALLSTATE INSURANCE  
COMPANY**

19 Defendant's Motion for Summary Judgment came before  
20 the Court for hearing on October 6, 2008. After  
21 reviewing and considering all papers filed in support of,  
22 and in opposition to, the Motion, as well as the  
23 arguments advanced by counsel at the hearing, the Court  
24 GRANTS Defendant's Motion for Summary Judgment.

## I. BACKGROUND

27 On March 7, 2008, Plaintiff Maria Gurrola filed suit  
28 in California Superior Court for the County of Riverside,

1 alleging claims for breach of contract and breach of the  
2 implied covenant of good faith and fair dealing against  
3 Defendant Allstate Insurance Company ("Defendant"). A  
4 fire on January 1, 2006 damaged Plaintiff's property,  
5 insured by Defendant; Plaintiff alleges Defendant  
6 mishandled her claim for damages caused by the fire.

7

8 Defendant removed the case to this Court and now  
9 brings a Motion for Summary Judgment against Maria and  
10 José Gurrola ("Plaintiffs")<sup>1</sup> arguing that the suit is  
11 time-barred.

12

## **II. LEGAL STANDARD**

13 A motion for summary judgment shall be granted when  
14 there is no genuine issue as to any material fact and the  
15 moving party is entitled to judgment as a matter of law.  
16 Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc.,  
17 477 U.S. 242, 247-48 (1986). The moving party must show  
18 that "under the governing law, there can be but one  
19 reasonable conclusion as to the verdict." Anderson, 477  
20 U.S. at 250.

21

22

23 Generally, the burden is on the moving party to  
24 demonstrate that it is entitled to summary judgment.

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26 <sup>1</sup>José Gurrola is deceased and Maria Gurrola has not  
27 yet filed a substitution of party on behalf of his  
estate. The Court therefore refers to José and Maria  
Gurrola as "Plaintiffs" and refers to Maria Gurrola alone  
28 by her full name.

1 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998);  
2 Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707  
3 F.2d 1030, 1033 (9th Cir. 1983). The moving party bears  
4 the initial burden of identifying the elements of the  
5 claim or defense and evidence that it believes  
6 demonstrates the absence of an issue of material fact.  
7 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

9 Where the non-moving party has the burden at trial,  
10 however, the moving party need not produce evidence  
11 negating or disproving every essential element of the  
12 non-moving party's case. Celotex, 477 U.S. at 325.  
13 Instead, the moving party's burden is met by pointing out  
14 that there is an absence of evidence supporting the non-  
15 moving party's case. Id.

17 The burden then shifts to the non-moving party to  
18 show that there is a genuine issue of material fact that  
19 must be resolved at trial. Fed. R. Civ. P. 56(e);  
20 Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 256. The  
21 non-moving party must make an affirmative showing on all  
22 matters placed in issue by the motion as to which it has  
23 the burden of proof at trial. Celotex, 477 U.S. at 322;  
24 Anderson, 477 U.S. at 252. See also William W.  
25 Schwarzer, A. Wallace Tashima & James M. Wagstaffe,  
26 Federal Civil Procedure Before Trial § 14:144.

1 A genuine issue of material fact will exist "if the  
2 evidence is such that a reasonable jury could return a  
3 verdict for the non-moving party." Anderson, 477 U.S. at  
4 248. In ruling on a motion for summary judgment, the  
5 Court construes the evidence in the light most favorable  
6 to the non-moving party. Barlow v. Ground, 943 F.2d  
7 1132, 1135 (9th Cir. 1991); T.W. Electrical Serv. Inc. v.  
8 Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630-31  
9 (9th Cir. 1987).

## III. DISCUSSION

#### A. Facts

The facts below are "admitted to exist without controversy" for the purposes of this Motion except where noted. See Local Rule 56-3.<sup>2</sup>

## **January 2006 Fire and February 2006 Payment**

Plaintiffs owned a home in Hemet, California built several decades ago and insured by Defendant Allstate at the time it suffered damage in a January 1, 2006 fire. (Def.'s SUF ¶ 1-3.) Plaintiffs' policy did not include coverage for building code upgrades. (Defendant's Notice of Lodgment of Evidence ("NOL") Ex. 1.)

<sup>2</sup>Plaintiffs' Statement of Genuine Issues of Material Fact ("SGMF") stated that Plaintiffs agreed with most of the statements in Defendant's Statement of Uncontroverted Facts ("Def.'s SUF"). Where Plaintiffs disagreed with the facts offered by Defendant, they disagreed with the interpretation of the quotes presented by Defendant but did not dispute their veracity. (SGMF ¶¶ 5-8.)

1       Plaintiffs promptly made a claim to Defendant for  
2 benefits under the fire insurance policy it issued to  
3 them. By February 15, 2006, Defendant had inspected the  
4 property, calculated the actual cash value of the damage,  
5 prepared an estimate of the cost of repair, and sent  
6 Plaintiffs a summary of the claim prepared by an  
7 insurance adjuster as well as a letter explaining the  
8 payment and a check for approximately \$37,000. (Def.'s  
9 SUF ¶ 4; NOL Exs. 3-5.)<sup>3</sup> Maria Gurrola endorsed the  
10 check and Bank of America processed it on April 10, 2006.  
11 (NOL Exs. 4-6.)

12

13       Plaintiffs retained attorney Sanford Kassel as  
14 counsel regarding their claim. Defendant responded to an  
15 October 6, 2006 letter from Plaintiffs' counsel on or  
16 about October 19, 2006, stating the "structure claim" had  
17 been estimated and paid, and it could "assist" Plaintiffs  
18 if they were "interested in resolving the claim  
19 pertaining to the fire related damages to the building  
20 structure." The letter reminded Plaintiffs they had one  
21 year from the inception of the damage to bring suit on  
22 the policy. (NOL Ex. 7.)

23       ///

24

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26       <sup>3</sup>This value was less than the amount required to  
27 rebuild the home because the home was built so long ago  
28 that substantial funds would be required to bring it into  
compliance with current building codes. The policy did  
not afford coverage for those costs.

1      **November 2006 Inspection and December 2006 Payment**

2            In late November 2006, both parties' representatives,  
3 as well as a contractor and a structural engineer,  
4 inspected the property again. (NOL Ex. 8.) After this  
5 inspection, Defendant wrote to Plaintiffs' counsel that  
6 Defendant would remit promptly any additional payment due  
7 Plaintiffs for an adjustment in the cash value of the  
8 claim. (NOL Ex. 8 (letter dated November 30, 2006); SGMF  
9 ¶ 12.)

10

11            Shortly thereafter, Defendant contacted Plaintiffs  
12 directly in a letter dated December 7, 2006.

13 (Plaintiffs' Notice of Lodgment of Evidence ("Pl.'s NOL")  
14 Ex.1.) Defendant informed Plaintiffs that based on the  
15 November 2006 inspection, Defendant would pay an  
16 additional \$1,828.45 pursuant to a "settlement agreement  
17 related to supplemental repairs . . . ." (*Id.*)<sup>4</sup>

18

19            Seven days later, in a letter to Plaintiffs dated  
20 December 14, 2006, Defendant enclosed a check for  
21 \$1,828.45 as "settlement of the supplement[al] [sic]  
22 estimate" that had taken place in conjunction with the  
23 November 2006 inspection. (NOL Ex. 9.) Defendant

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25            <sup>4</sup>The December 7, 2006 letter also informed Plaintiffs  
26 that they could "make a claim for the recoverable  
27 depreciation for an amount in excess of actual cash  
28 value" by "repair[ing], rebuild[ing] or replac[ing] the  
damaged property within one year of the actual cash value  
payment." (*Id.*) No work has been done. (Declaration of  
Patricia Bobbs ("Bobbs Decl.") ¶ 16.)

1 stated: "This payment concludes our claim handling based  
2 upon the scope related to the fire damage to your home .  
3 . . bottom line is that Allstate has paid what we believe  
4 to be the actual cash value of the repairs necessary as a  
5 result of this fire." (NOL Ex. 9.)

6

7 **December 2006 and February 2007 Checks**

8 Defendant has produced copies of two checks, each for  
9 \$1,828.45, the amount mentioned in the December 7, 2006  
10 and December 14, 2006 letters as the settlement entered  
11 into pursuant to the November 2006 inspection. (See  
12 Pl.'s NOL Ex. 1; NOL Exs. 9, 10; Supplemental Declaration  
13 of Patricia Bobbs ("Bobbs Supp'l Decl.") Ex. 16.) The  
14 first is dated December 14, 2006 and the second is dated  
15 February 7, 2007. Both checks bear the same amount,  
16 claim number, and policy number and both state that they  
17 are "Payment for DWELLING Coverage for FIRE Loss of  
18 01/01/2006." (See NOL Ex. 10; Bobbs Supp'l Decl. Ex.  
19 16.)

20

21 According to Defendant, the first check was issued in  
22 December 2006 and addressed to "Maria Gurrola, Jose  
23 Gurrola." (Bobbs Supp'l Decl. Ex. 16.) Plaintiffs'  
24 public insurance adjustor requested that Defendant cancel  
25 the December 2006 check and re-issue it in the name of  
26 Maria Gurrola and her public insurance adjustor, because

27

28

1 José Gurrola had died.<sup>5</sup> (Reply 2 n.3.) Defendant  
2 acceded to this request, cancelled the check and, on  
3 February 7, 2007, re-issued a check for \$1,828.45 to  
4 "Maria Gurrola and and [sic] Cross Check." (NOL Ex. 10;  
5 Bobbs Supp'l Decl. Ex. 16.) Bank of America processed  
6 the February 2007 check on February 28, 2007. (NOL Ex.  
7 10.) Plaintiff has not produced evidence conflicting  
8 with Defendant's account of these events.

9

10 **Acknowledgment of the One-Year Period**

11 Meanwhile, sometime in the fall or winter of 2006,  
12 Plaintiffs terminated Sanford Kassel's representation of  
13 them in their dealings with Defendant. By December 14,  
14 2006, Defendant had received written confirmation that  
15 Mr. Kassel no longer represented Plaintiffs. (See NOL  
16 Ex. 9.)

17

18 On December 15, 2006, Maria Gurrola signed an  
19 "Acknowledgment of Receipt of File/Documents" from  
20 Sanford Kassel. She "acknowledge[d] that [she] was  
21 previously informed of [her] one (1) year statute of  
22 limitations to file a Complaint in this matter" and that  
23 she was "fully aware of [her] one (1) year statute of  
24 limitations." (Def.'s SUF ¶ 7, NOL Ex. 11; see  
25 Declaration of Maria Gurrola ("Gurrola Decl.") ¶ 2.)

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26

27 <sup>5</sup>After Plaintiffs terminated Sanford Kassel's  
28 representation of them, Plaintiffs retained a public  
insurance adjustor.

1 **January 2007 Request for Reconsideration and April 2007  
2 Letter**

3 In response to a January 5, 2007 inquiry, Defendant  
4 sent Plaintiffs' public insurance adjustor a letter dated  
5 April 17, 2007. Defendant dismissed the legal arguments  
6 raised in the January letter as irrelevant and stated  
7 that "the one-year policy statute of limitations  
8 commenced to run . . . October 19, 2006 . . ." (Def.'s  
9 SUF ¶ 8, NOL Ex. 12.) The letter indicated that a copy  
10 was sent to Maria Gurrola.

11

12 In a letter dated June 8, 2007 to Plaintiffs' public  
13 insurance adjustor, Defendant again reminded Plaintiffs  
14 that the "one-year policy statute of limitations  
15 commenced . . . October 19, 2006" and that Plaintiffs  
16 "ha[d] until October 19, 2007 to file any legal action  
17 against [Defendant]." (Def.'s SUF ¶ 9; NOL Ex. 13.)  
18 This letter also indicated that a copy was sent to Maria  
19 Gurrola.

20

21 Defendant informed Plaintiffs of the October 19, 2007  
22 deadline a fourth time in a letter dated October 10, 2007  
23 addressed to Robert Silverberg, Plaintiffs' counsel in  
24 this lawsuit. The letter stated: "Ms. Gurrola has until  
25 October 19, 2007 to commence any legal action against  
26 [Defendant]." (Def's SUF ¶ 10; NOL Ex. 14.)

27

28

1   **March 2008 Filing of this Action**

2           Plaintiffs filed suit on March 7, 2008. (Def.'s SUF  
3 ¶ 11.) Defendant filed a Motion for Summary Judgment  
4 ("Mot.") on September 12, 2008. Plaintiffs filed their  
5 Memorandum of Points and Authorities in Opposition  
6 ("Opp'n") on September 22, 2008. Defendant filed its  
7 Reply ("Reply") on September 26, 2008.

8

9   **B. Tolling of the One-Year Period**

10          The fire insurance policy on which Plaintiffs base  
11 their suit is governed by California Insurance Code  
12 sections 2070 and 2071. These statutes mandate uniform  
13 language for fire insurance policies and require filing  
14 of any suit on a policy within twelve months, or one  
15 year, of the inception of the loss. Cal. Ins. Code §§  
16 2070, 2071. California insurers have a duty to inform  
17 insureds about this one-year period if the insurer denies  
18 a claim; if the insurer settles the claim it bears no  
19 such burden. See Marselis v. Allstate Ins. Co., 121 Cal.  
20 App. 4th 122, 126 (2004).

21

22          The California Supreme Court has found that the one-  
23 year period is equitably tolled while the insurer  
24 processes the claim. Prudential-LMI Comm. Ins. v.  
25 Superior Court, 51 Cal. 3d 674, 693 (1990). The year  
26 during which a plaintiff must file suit begins when the  
27 insurer settles the claim or denies it in writing. Id.

1 (one-year period commences when insurer denies coverage);  
2 Marselis, 121 Cal. App. 4th at 124 (one-year period  
3 begins to run when claim is settled). An insurer's  
4 statement that no further benefits will be paid has been  
5 construed as a denial and also will begin the one-year  
6 period. Migliore v. Mid-Century Ins. Co., 97 Cal. App.  
7 4th 592, 605 (2002).

8  
9 After the claim has been investigated and denied, no  
10 tolling of the one-year period occurs based on an  
11 insured's requests for reconsideration of an insurer's  
12 failure to pay. Singh v. Allstate Ins. Co., 63 Cal. App.  
13 4th 135, 142 (1998).

14  
15 Here, a fire damaged Plaintiffs' house on January 1,  
16 2006 and they filed suit on March 7, 2008. Hence, this  
17 motion presents a single issue: whether or not the one-  
18 year period provided by statute had expired before  
19 Plaintiffs filed suit. In other words, the Court must  
20 determine when the equitable tolling in effect during the  
21 insurer's investigation ended.

22  
23 In order for Plaintiffs' complaint to have been filed  
24 timely, the tolling period must have been in effect until  
25 sometime on or after March 7, 2007. Defendant contends  
26 that the tolling period ended in October or, at the  
27 latest, December, of 2006, when its investigation ended,  
28

1 it paid a settlement amount, and it denied further  
2 payment on the claim. Plaintiffs contend that  
3 Defendant's February 2007 check and the language of its  
4 December 2006 letter continued to toll the commencement  
5 of the one-year period.

6

7 The Court considers first when the one-year  
8 limitations period began. Under Prudential and its  
9 progeny, the one-year period for filing the complaint was  
10 tolled while the insurer processed the claim and began  
11 when the claim was settled or denied. See Prudential-  
12 LMI, 51 Cal. 3d at 693; Marselis, 121 Cal. App. 4th at  
13 124; Migliore, 97 Cal. App. 4th at 605.

14

### 15       **1. October 2006**

16       The parties offer differing interpretations of the  
17 letter Defendant sent to Plaintiffs' counsel in October  
18 2006. (See NOL Ex. 7.) Defendant relies on the portion  
19 of that document which states "[t]he structure claim has  
20 been estimated and the actual cash value has been paid,"  
21 to argue that the October 2006 letter signaled that  
22 Defendant had finished processing the claim, and  
23 therefore the one-year period began on that date. (See  
24 Mot. 4; Reply 1.)

25

26       This argument is flawed, however. As Plaintiffs  
27 note, the October 2006 letter indicated in the same  
28

1 paragraph that some aspects of the claim pertaining to  
2 the fire-related damages to the building structure had  
3 not been resolved. Furthermore, the October 2006 letter  
4 suggests-- but does not state unequivocally-- that  
5 further payment is forthcoming. See Singh, 63 Cal. App.  
6 at 142. Accordingly, the Court finds that the October  
7 2006 letter did not end the tolling of the one-year  
8 period. See Migliore, 97 Cal. App. 4th at 605.

9

10           **2. December 2006**

11           Defendant argues in the alternative that tolling of  
12 the one-year period ended in December 2006, when  
13 Defendant wrote to Plaintiffs that it had "conclude[d]"  
14 its processing of their claim and that the "bottom line  
15 [wa]s that Allstate has paid what we believe to be the  
16 actual cash value of the repairs necessary as a result of  
17 the fire." (Mot. 4; NOL Ex. 9.) With this letter  
18 Defendant enclosed a settlement check for \$1,828.45 made  
19 payable to Maria and José Gurrola. (See NOL Ex. 9; Bobbs  
20 Supp'l Decl. Ex. 16.)

21

22           The December 2006 letter ended tolling of the one-  
23 year period. It clearly stated that "no further benefits  
24 w[ould] be provided beyond those previously paid," as  
25 required by Migliore. See 97 Cal. App. 4th at 605  
26 (tolling of the one-year period ended when insurer denied  
27 plaintiff's claim by refusing to make further payments).

28

1 Here Defendant wrote: the "bottom line is that Allstate  
 2 has paid what we believe to be the actual cash value of  
 3 the repairs necessary as a result of the fire." As  
 4 Defendant denied the claim in December 2006, any suit  
 5 filed after December 2007 was untimely.

6

7 Plaintiffs cite Spray, Gould & Bowers v. Associated  
 8 International Insurance Company, 71 Cal. App. 4th 1260  
 9 (1999) to argue that Defendant had a duty to warn them of  
 10 the one-year period and should be estopped from asserting  
 11 the statute of limitations because it failed to notify  
 12 them of it in the December 2006 letter. (Opp'n 6.)<sup>6</sup>

13

14 Plaintiffs are correct that the December 2006 letter  
 15 did not mention the one-year statute of limitations.  
 16 (NOL Ex. 9.) Nevertheless, their argument fails. The  
 17 insurer in Spray had a duty to inform the insured about  
 18 the one-year period but remained silent. See Spray, 71  
 19 Cal. App. at 1264-65. Assuming that the insurer here  
 20 denied the claim rather than settling it, as discussed

21

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22         <sup>6</sup> The duty to warn of the one-year period comes into  
 23 play if the claim is denied. Under Migliore, Defendant's  
 24 statement that it would not make further payments was a  
 denial and triggered that duty. 97 Cal. App. 4th at 603.

25 Defendant's 2006 payment and letter could, however,  
 26 also be construed as a "settlement" because the letter  
 27 refers to the enclosed payment as a "settlement" check.  
 If Defendant settled the claim in December 2006, it ended  
 tolling of the one-year period and did not require  
 Defendant to inform Plaintiffs of the one-year period.  
 28 See Marselis, 121 Cal. App. at 126.

1 *supra* at note 6, the insurer here informed Plaintiffs or  
2 Plaintiffs' representatives about the one-year provision  
3 four times between October 2006 and October 2007. (NOL  
4 Ex. 7 (October 2006 letter); NOL Ex. 12 (April 2007  
5 letter); NOL Ex. 13 (June 2007 letter); NOL Ex. 14  
6 (October 2007 letter).) Plaintiffs' argument that  
7 Defendant is estopped from relying on the one-year limit  
8 is therefore unconvincing.

9

10 **3. February 2007**

11 Plaintiffs also suggest the February 2007 check  
12 prevents the termination of the tolling of the one-year  
13 period in December 2006; that is, it prevents the one-  
14 year period from ending in December 2007. (Opp'n 5.) As  
15 explained by California courts, the one-year period is  
16 tolled to prevent stale claims while allowing the insured  
17 to obtain information from the insurer about how it will  
18 handle the claim. Singh, 63 Cal. App. at 142;  
19 Prudential-LMI, 51 Cal. 3d at 691-92.

20

21 Here the amount of the February 2007 check,  
22 \$1,828.45, was based on the November 2006 inspection. A  
23 check for this amount was issued in December 2006 and  
24 only re-issued in February 2007 at the request of Maria  
25 Gurrola. The December 2006 and February 2007 checks are  
26 issued under the same policy number, claim number, and  
27 subject line. (NOL Ex. 10; Reply 2 n.3; Bobbs Supp'l  
28

1 Decl. Ex. 16.) The February 2007 check was endorsed and  
 2 Bank of America processed it on February 27, 2007.  
 3

4       The policy behind tolling the one-year period is not  
 5 served by allowing the February 2007 check to prevent the  
 6 one-year period from beginning in December 2006 and  
 7 ending in December 2007. Tolling can be appropriate  
 8 where a defendant's actions "project the expectation that  
 9 plaintiffs should hold their suit in abeyance." Singh,  
 10 63 Cal. App. at 142 (declining to permit plaintiffs'  
 11 request for reconsideration to toll the one-year period).  
 12 Plaintiffs have cited no evidence to suggest that they  
 13 had a reasonable expectation that Defendant continued to  
 14 process their claim. See id. Plaintiffs have not  
 15 produced any letter accompanying the February 2007 check.  
 16 The February 2007 check on its own did not create any  
 17 expectation that Defendant's position had changed. It  
 18 was simply a duplicate of the December 2006 check, re-  
 19 issued to accommodate Maria Gurrola's request regarding  
 20 the names of the payees. (Reply 2 n.3; Bobbs Supp'l  
 21 Decl. Ex. 16.);<sup>7</sup> see Singh, 63 Cal. App. at 142. Under  
 22

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23       <sup>7</sup>Plaintiffs' argument that a suit filed on March 7,  
 24 2008 is timely also is defeated by the endorsement and  
 25 cashing of the check no later than February 28, 2007, the  
 date of Bank of America's processing stamp on the back of  
 the check. (NOL Ex. 10.)

26       Cashing a check enclosed with a letter stating that  
 27 the "bottom line" was that the insurer considered the  
 28 claim fully paid was arguably an accord and satisfaction.  
Angle v. U.S. Fid. and Guar. Co., 201 Cal. App. 758, 764  
 (continued...)

1 these circumstances, the Court finds that the one-year  
2 period began in December 2006 and ended in December 2007.

3

4 **4. Request for Reconsideration**

5 Alternatively, Plaintiffs argue that the parties'  
6 correspondence in the spring of 2007 continued to toll  
7 commencement of the one-year period. In January 2007, in  
8 a letter not cited to the Court, Plaintiff's public  
9 insurance adjustor apparently asked Defendant to  
10 reconsider its payment on the claim. Defendant responded  
11 to this letter in April 2007 by reiterating its position  
12 that no further payment would be forthcoming. (NOL Ex.  
13 12.)

14

15 Plaintiffs' request for reconsideration does not toll  
16 the one-year period. See Singh, 63 Cal. App. at 142.  
17 "Once a claim has been made, the carrier has pursued its  
18 investigation, and the claim has been denied, the  
19 policies behind equitable tolling have been fulfilled."

20

21

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<sup>7</sup>(...continued)

22 (1962) (discussing in the context of a claim on a fire  
23 insurance policy the rule that acceptance of a check by a  
24 creditor from a debtor for an amount less than that  
claimed by the creditor is an accord and satisfaction  
where the check is given with "an explicit statement . . .  
that it is offered as full payment.").

25

26 Even if Defendant were still processing the claim  
27 after December 2006, as Plaintiffs argue, the last  
conceivable date to which the one-year period could be  
tolled was February 27, 2007. The last date on which a  
28 filing could have been timely was therefore February 27,  
2008. Plaintiffs did not file suit until March 8, 2008.

1 *Id.* at 142. Granting Plaintiffs "a new period of  
2 equitable tolling based merely on a *request* for  
3 reconsideration would be anomalous" because it would  
4 allow claimants to "extend the one-year statute at will  
5 with successive periods of tolling." *Id.* at 145.

#### **IV. CONCLUSION**

For the reasons above, the Court finds the suit untimely and GRANTS Defendant's Motion.

Dated: October 6, 2008

*Virginia A. Phillips*  
VIRGINIA A. PHILLIPS  
United States District Judge